

Application No. 10/519,212
Attorney Docket No. 04853.0121-00000

REMARKS

In the Final Office Action ("FOA") dated May 8, 2006, the Examiner rejects claims 1-12 and 14-21, acknowledges the cancellation of claim 22, and withdraws from consideration claims 13 and 23 as non-elected claims. In the present amendment, Applicants cancel claims 13 and 23 without disclaimer or prejudice to the introduction of the subject matter in another application. Following entry of the present amendment, claims 1-12 and 14-21 are pending for examination.

Rejection of Claims 3 and 21 and Claims 1-12 and 14-21 Under 35 U.S.C. § 112, First Paragraph

In the Final Office Action ("FOA") dated May 8, 2006, the Examiner rejects all pending claims for having a non-enabling disclosure and lack of disclosure of best mode under 35 U.S.C. 112. The Examiner states:

Applicant is able to overcome the above rejections by the submission of the one sentence pertaining to the availability of the strain(s) in accordance with US Patent Rules pertaining to deposits:

----- Applicant(s) state that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent. FOA at pages 4-5.

To support this assertion, the Examiner states:

If a deposit has not been supplied or made under the Budapest Treaty, than an affidavit or declaration by Applicants or someone associated with the patent owner who is in a position to make such assurances, or a statement by an attorney of record over his or her signature, stating that the deposit has been made under the terms of the Budapest Treaty and that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent, would satisfy the deposit requirements. See 37 CFR 1.808. FOA at page 3 (emphasis in original).

There is no question that the deposit has properly been made under the Budapest Treaty. See "Receipt in the Case of an Original Deposit" previously filed on December 27, 2004. However, to ensure full and clear compliance with the regulations governing deposit, Applicants respectfully submit the statement requested by the Examiner. See M.P.E.P. 2411.01 ("Where a

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deposit is required to satisfy 35 U.S.C. 112, a deposit must be made in accordance with these regulations. A deposit accepted into any IDA under the Budapest Treaty shall be accepted for patent purposes if made under conditions which comply with 37 CFR 1.806 and 37 CFR 1.808(a) concerning term of deposit and permissible conditions on access once the patent is granted.”).

Therefore, Applicants hereby state that all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent. *See* 37 C.F.R. 1.808(a)(2).

CONCLUSION

In view of the foregoing remarks, Applicants respectfully request reconsideration of the application and the timely allowance of pending claims 1-12 and 14-21. Applicants believe the foregoing remarks place the application in condition for allowance. If the Examiner does not find the claims allowable, the undersigned requests that, prior to taking action, the Examiner call her at (650) 849-6611 to set up an interview.

Please grant any further extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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